

who were present at the signing of the Declaration of Independence, 24 of them were lawyers who understood the importance of the very issues we are talking about today.

Why do I know that? Because if you read the Declaration of Independence, you will see the stated grievances against King George and that the amazing parallels in those grievances that they were discussing at the founding of our Nation and the same things we are talking about today is stark.

Let me remind you of what is in the Declaration. These are the grievances they identified against King George III.

For depriving us in many cases of the right to trial by jury, which is why the Seventh Amendment of the Constitution and the Bill of Rights guarantees the trial by jury in all civil cases where the monetary value is in excess of \$15.

Also the grievance for taking and abolishing our most valuable laws and altering fundamentally the forms of our government.

Third, for suspending our own legislatures and declaring themselves, the king, vested with the powers to legislate for us.

That is why these are fundamental civil rights that have been part of this country's history since its founding that we are talking about.

My friend from Colorado made a great point. What we are talking about with the setting up of the FISA courts was setting up retroactive warranties that gave the government the extraordinary ability to do wiretapping without a court order, which had never been before tolerated in this country, with the understanding that the terrorism risk justified that sacrifice, and setting up the FISA courts for an orderly form of due process to look backwards and guarantee that human rights were not being violated. So we are talking here about retroactive immunity, when we have already got retroactive warranties and a process in place to take care of these concerns.

One of the things that nobody has talked about on the floor during the debate over this issue is the fact that retroactive immunity only benefits wrongdoers. If you have done nothing wrong under the law or the Constitution, you don't need immunity.

My friends have been talking about the underlying basis for the violation of laws by the telecoms, and I think we need to state what that is. It goes back to 1934. The Federal Communications Act, Section 222, this Congress imposed on telecommunication carriers, such as all these companies we are talking about, the duty under law to protect sensitive personal customer information from disclosure. That is the basic statutory right that is at stake by allowing retroactive immunity to companies who violate that law.

So when people complain about us arguing the merits of standing up for defense of the Constitution and the laws passed by this Congress, I am at a loss to understand why we should be sub-

ject to all of this angst for simply doing our jobs and standing up for the oath we took when we were sworn in to uphold and defend the Constitution and the laws of this country.

With that, I yield back to my friend.

Mr. KAGEN. If I may ask a question, because I really appreciate your legal acumen, it is good to have roommates that are attorneys. So what you are explaining to us is that I have a right to my own phone records. That the records the phone company might have are not their records. They really are my personal files, and they are entrusted with that information on my behalf and cannot release that information to anyone without my permission or a court order. Did I hear you correctly?

Mr. BRALEY of Iowa. That is the very essence of the authority given to these telecommunications carriers, to use that public trust of allowing them to monitor and handle communications through a system of phone lines, which is what we had back in 1934, and in exchange for that trust, imposing on them the duty to protect that sensitive information. That is why we have the Fourth Amendment. That is why we have a system in place to guarantee the privacy of those customers.

Mr. KAGEN. Just to follow up, if I understand what you are saying, what we are really talking about is everybody's personal individual liberty and their rights as guaranteed under the Constitution, and that giving blanket immunity without asking any questions would be giving away individual liberties and rights. Is that correct, Mr. PERLMUTTER?

Mr. PERLMUTTER. Yes. To my good friend from Wisconsin, this is about the rights we enjoy as Americans, and this is about the responsibility that we have as Members of Congress to make sure that there isn't some violation of the rights that we enjoy as Americans, we as Members of Congress and everybody we represent. Really what has been troubling I think to everybody is that the President says "Trust me. Just give them amnesty. Just give them immunity." The phone companies are saying, "We really can't talk to you because we are sworn to secrecy. Just trust us."

You know, I don't know about any of you and your constituents, but I know that my constituents expect good representation, good oversight of these kinds of things. And if the telecommunications are entitled to some protection, we have given them protection in the law. If you get a warrant, you are immune. You are doing your national duty by wiretapping or using your surveillance powers. But you got to go through the right process to protect those rights that we are so fortunate to enjoy as Americans.

Mr. BRALEY of Iowa. If the gentleman would yield for a question, I know that my friend from Colorado happens to represent a district where the headquarters for one of the tele-

communications carriers is located, Denver, Colorado, where Quest has one of its primary business centers.

What I would like to ask my friend is, why didn't Quest go along with this request from the government? A lot of these other telecoms did. What was it that prompted them to say this doesn't sound right?

Mr. PERLMUTTER. Well, I don't know. I wasn't an attorney for Quest. Just in terms of what I have read and the individuals I have spoken to, I think Quest would respond by saying we wanted to follow the law. It isn't as if Quest has a spotless record everywhere, but in this instance they did the right thing and they have got to be given credit for it. Others chose to maybe take the path of least resistance.

Mr. BRALEY of Iowa. If you would yield for another question, I am going to pose this to all of my friends here on the floor.

When somebody comes to me and asks me to ignore my duties to make sure that the laws and the Constitution are followed, which is what they are asking us to do by granting immunity to these phone companies, I think the average American citizen would expect at a minimum that I would be aware of what was in these documents that are at the subject of this request for immunity.

I don't know about the rest of you, but I haven't seen a single document that has been produced in order to supposedly justify a claim for immunity. I am just curious whether any of my friends have seen them in their capacity as a Member of Congress?

Mr. KAGEN. I appreciate the question. I am not very good with analogies, but it kind of sounds like a blind umpire, doesn't it? If we don't know what we are looking at, how can we judge if it is fair or foul or a strike or a ball, in baseball parlance.

But let me come back to this idea about cherry picking our laws and cherry picking it apart to the point where the law doesn't mean anything. Earlier today in this Chamber we had the distinct privilege of passing a law about mental health care, about mental health care insurance. We laid the foundation, the foundation that would establish our constitutional rights in health care, so that people will not be discriminated against on the basis of a preexisting condition, albeit mental health care or a heart condition or otherwise.

But the idea of cherry picking our Constitution and our laws, are the signing statements, the many hundreds of signing statements by this administration or by this President, is that a sign or a symptom of cherry picking our laws? Is this a situation we are in now, where we finally have found a President that doesn't believe in the Constitution, that won't enforce the laws, either immigration or our constitutional rights? Mr. PERLMUTTER?

Mr. PERLMUTTER. Well, I want to step back for a second and just talk